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IN THE
COURT OF APPEALS OF INDIANA

THE ESTATE OF WILLIAM DRAKE, DECEASED,	)	
Appellant-Defendant,	)	
vs.	)	No. 59A01-0601-CV-9
SPRINGS VALLEY BANK & TRUST CO.,	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE ORANGE CIRCUIT COURT
The Honorable Roger Davis, Special Judge
Cause No. 59C01-0405-PL-147

October 18, 2006

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

The Estate of William Lloyd Drake ("the Estate") appeals the judgment entered for Deborah Rutherford after a jury determined that she was the designated beneficiary of an IRA account at Springs Valley Bank & Trust Company ("the Bank").

We affirm.

ISSUES

1. Whether the trial court committed reversible error in the admission of evidence.

2. Whether the trial court erred when it did not give an instruction tendered by the Estate.

3. Whether the evidence is insufficient to support the verdict.

FACTS

On December 29, 1983, William Drake ("William") opened an IRA account with the Bank, and he designated his mother, Minnie Drake, as the beneficiary. On July 23, 1993, Minnie Drake died. A typewritten document dated "8-6-93" with the signature of a "William Drake" was received by the Bank, and stated as follows:

> Change Beneficiary of William Drake to Debra Rutherford, same address as his. she is a friend.

(Ex. 2). The statement was directed to its trust department, which maintains the Bank's IRA files in locked vault drawers. At the trust department, the statement was placed in William's IRA file in the vault. On August 17, 2002, William died in an accident abroad.

On May 6, 2004, the Bank filed an interpleader action, naming the Estate and Rutherford as defendants and seeking to determine ownership of the IRA account.[1] The Bank moved for summary judgment, which was granted, and the proceeds of the IRA account were deposited with the trial court.[2] On September 28, 2005, a jury trial on the matter commenced.

Long-time employees of the Bank testified that although they had no memory of the specific events regarding William's IRA, the Bank's procedures in 1993 required certain actions to be taken. Testimony was presented that Exhibit 2, the statement, would have been given to the trust department, and an employee of the trust department would have contacted William to indicate that additional information was required by him to designate a new beneficiary. Bank witnesses further testified that a note stating "Re: Beneficiary for William Drake IRA" and providing Rutherford's correct name and Social Security Number (Ex. 1) had been handwritten by a Bank employee and put with the 1993 statement in William's IRA file in the locked vault. A Bank employee also testified that together, Exhibits 1 and 2 contained the information necessary to effect a beneficiary

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[1] The appendix submitted by the Estate contains no pleadings from the trial court. However, this fact is gleaned from the context of trial arguments and the caption of the initial cause filed by the Bank.

Interpleader is an equitable proceeding for the determination of adverse claims by rival claimants to the same property or fund held by a third person as stakeholder. 17 I.L.E. Interpleader § 1(2003). The Indiana Trial Rules provide that persons having claims against the plaintiff may be joined as defendants and required to interplead when their claims are such that the plaintiff is or may be exposed to double or multiple liability. Id. at § 2 (citing Ind. Trial Rule 22).

The IRA document provided that if the designated beneficiary did not survive William, or "if no designation" was made, the IRA proceeds would be paid to his estate. (Ex. A).

[2] A party seeking interpleader "may deposit with the court the amount claimed, or deliver to the court . . . the property claimed, and the court may thereupon order such party discharged from liability as to such claims, and the action continued as between the claimants of such money or property." T.R. 22(D).

designation.[3] She also testified that a common reason for a change of beneficiary was "the death of the first beneficiary." (Tr. 35). Another Bank employee testified that in September of 2002, she retrieved William's IRA file to note a new address for Rutherford, and Exhibits 1 and 2 were in the file at that time.

James Drake ("James"), William's brother and the personal representative of the Estate, testified that Rutherford had lived with William for "close to twenty-five years," from sometime in the 1970s until perhaps 2000. (Tr. 111). Drake further testified that William and Rutherford had jointly owned real property in Tennessee. Over the Estate's relevancy objection, James further testified that at the time of William's death, this real property remained jointly owned. Over the same objection, James also testified that at the time of William's death, Rutherford was the beneficiary of several of William's life insurance policies, an IRA other than the one at issue, William's 401K, and numerous savings bonds. James further testified that he had found a document written by William that "attempted to divide his estate"; it stated that his "cash and assets, properties were at the time to go to [Rutherford]." (Tr. 123, 127). James considered "cash" to include "proceeds from an IRA." (Tr. 128). James also testified that he recognized and "knew [William's] signature." (Tr. 146). James then testified and identified a number of personal checks, two corporate agreement documents, two vehicle registrations, and an application ("the documents") which bore William's signature. However, James testified that the signature on Exhibit 2 was not William's.

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[3] According to this employee of the trust department, the IRA account was worth approximately $20,000 at the time of trial.

Clark Mercer, a forensic document examiner for more than thirty years, testified that he had compared the signatures "on the documents" to the signature on Exhibit 2. Mercer's conclusion was that the person who had signed "the documents" had not signed Exhibit 2.

When Rutherford was called as a witness to testify, the Estate objected and argued that any testimony by Rutherford would violate the Dead Man Statute. The trial court ruled that Rutherford could "testify about things that happened after the date of death" but not "about anything that happened during his lifetime." (Tr. 168). Rutherford testified that at William's death, she (1) became the beneficiary of his life insurance policies; (2) received an IRA at his place of employment; (3) became the beneficiary of three accidental death policies; (4) became the recipient of the jointly-owned real property; (5) received 126 savings bonds; (6) received William's 401K account; and (7) received a CD at the Bank.

Finally, the jury heard testimony from J.C. Tucker ("Tucker") – who had practiced law for 34 years in the community and had represented the Estate in probate proceedings. Tucker had performed various legal work for William in past years, had witnessed his signature, and did not believe that the signature on Exhibit 2 was William's. Tucker described William as "an entrepreneur" who conducted a variety of businesses "from the seat of his pants" and was "haphazard" in his business practices. (Tr. 222, 221, 223). Tucker also testified that William's affairs were "in more disorder than any other estate" he had seen, and that during the three years he worked on his estate, he frequently

encountered instances where William had made verbal arrangements with individuals contrary to his written arrangements with them. (Tr. 214).

The court asked Tucker, "as a legal expert" and "a licensed, practiced attorney with several decades plus of experience," to answer a series of questions submitted by the jury. (Tr. 223, 224). In answering these questions, Tucker testified – without objection – that it was his "legal opinion" that it was "legally acceptable" for "an individual to give verbal permission for another person to sign something on their behalf." (Tr. 228). Although it would be "better evidence that that occurred" if there were a writing of that authorization or "witnesses to him authorizing someone to sign on his behalf," it was "perfectly acceptable legally" for the person "to verbally authorize another to sign on their behalf without" any such evidence "if the jury believes that's what happened." (Tr. 229). For example, someone at the Bank could have signed William's name "if [William] gave them the authority to do it." Id. Again asked whether there needed to be a witness to William's giving such permission, Tucker answered, "That's up to the jury, it's what they, what they think [William]'s intent was . . . you don't have to have any witnesses." (Tr. 230). Tucker explained that the jury was "to determine based on the evidence they had as to what [William]'s intention were [sic] with respect to who was gonna be the beneficiary of this IRA." Id. Tucker was the last witness.

On September 29, 2005, the jury found Rutherford to be "the owner of and entitled to" the IRA account. (App. 9). On October 28, 2005, the Estate filed a motion for judgment on the evidence or, alternatively, to correct error.[4] The motion was denied.

DECISION

1. Admission of Evidence

The trial court has broad discretionary power regarding the admission of evidence, and its decisions are reviewed only for an abuse of that discretion. Moore v. State, 771 N.E.2d 46, 56 (Ind. 2002), cert. denied 538 U.S. 1014 (2003). An abuse of discretion, requiring us to reverse the trial court's decision, "occurs where the trial court's decision is clearly against the logic and effect of the facts and circumstances before the court or it misinterprets the law." Carpenter v. State, 786 N.E.2d 696, 702 (Ind. 2003).

The Estate raises two arguments that challenge the trial court's admission of evidence. We address them in turn.

A. The Estate first argues that the trial court erred when it allowed James to answer questions about other assets of William's that went to Rutherford upon his death and about the document allegedly handwritten by William in which he indicated his intent that Rutherford have his IRA account upon his death.[5] The Estate asserts that the erroneous admission of this evidence was "unduly prejudicial" and improper because William's "intention" as to the beneficiary of the IRA upon his death "[wa]s not the issue." Estate's Br. at 20, 19.

[4] The motion is not included in the Estate's appendix.

[5] The Estate proffers no legal authority establishing such asserted trial court error.

This argument must fail. The first question to James concerning an asset that Rutherford received upon William's death was whether "both names" appeared on the jointly owned real property. (Tr. 112). The Estate objected, "That's irrelevant." Id. Rutherford responded that she would "attempt to show what his intent was with regard to this beneficiary by using circumstantial evidence" to show "his intent to in fact change the beneficiary on the account at issue to . . . Rutherford," and that evidence of joint ownership together with "if in fact they were named on property together when he passed" would be relevant to that end. (Tr. 112-113). The trial court overruled the Estate's objection, holding that it was "relevant to show what the deceased's intention may or may not have been." (Tr. 113). Thereafter, all objections by the Estate in this regard continued to assert relevancy.

"Relevant evidence" is defined as evidence "having any tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence." Indiana Trial Rule 401. Without objection, Tucker provided expert witness testimony that, in his opinion, the jury was to determine William's intent as to the disposition of the IRA account at issue. Thus, the testimony about other property that passed to Rutherford upon William's death would be relevant to show William's intent regarding his IRA. Moreover, the jury was instructed that Rutherford bore the burden of proving by a preponderance of the evidence that the beneficiary designation was a validly executed document.

B. The Estate also argues that based upon Indiana's Dead Man Statute, Indiana Code section 34-45-2-4, the trial court erred in allowing Rutherford to testify. Specifically, it

asserts that her testimony about assets she received upon William's death constituted improper testimony about activities undertaken by William during his life, citing Bedree v. Bedree, 747 N.E.2d 1192 (Ind. Ct. App. 2001), and Miller v. NBD Bank, N.A., 701 N.E.2d 282 (Ind. Ct. App. 1998). We do not find those cases to render Rutherford's testimony inadmissible.

Indiana Code section 34-45-2-4, "commonly known as the Dead Man's Statute," applies in "suits or proceedings (1) in which an executor or administrator is a party; (2) involving matters that occurred during the lifetime of the decedent; and (3) where a judgment or allowance may be made or rendered for or against the estate represented by the executor or administrator." Id. at (a). In such a suit or proceeding, "a person who is a necessary party to the issue or record; and (2) whose interest is adverse to the estate is not a competent witness as to matters against the estate." Id. at (b). As we explained in Miller, one purpose of the statute "is to prevent persons from testifying against the estate as to transactions, acts or conversations of the decedent when the decedent's 'lips are sealed by death.'" 701 N.E.2d at 287 (quoting In re Sutherland's Estate, 246 Ind. 234, 240-41, 204 N.E.2d 520, 523 (1965)). Thus, application of the statute "is limited to circumstances in which the decedent, if alive, could have refuted the testimony of the surviving party." Bedree, 747 N.E.2d at 1195 (quoting Johnson v. Estate of Rayburn, 587 N.E.2d 182, 184 (Ind. Ct. App. 1992)); Fisher v. Estate of Haley, 694 N.E.2d 1023, 1027 (Ind. Ct. App. 1998); Estate of Verdi by Verdi v. Toland, 733 N.E.2d 25, 26 n.1 (Ind. Ct. App. 2000), trans. denied .

In Bedree, the action was one brought by the personal representative of the decedent's estate challenging a deed by which, shortly before her death, the decedent had conveyed real property to her brother. The estate moved to have the brother declared incompetent to testify, based on the Dead Man's Statute. The trial court ruled that the brother was "not allowed to testify to any matter which occurred during the lifetime of the decedent," and we affirmed that ruling. 747 N.E.2d at 1194. Similarly, in Miller, the action was a claim by Miller against an estate based upon a document allegedly signed by the decedent; this document purported to modify an earlier uncontested contract with Miller signed by the decedent. 701 N.E.2d at 284. We discussed "Miller's competency as a witness" pursuant to the Dead Man's Statute, and found Miller "incompetent to testify about whether [the decedent] signed the challenged modification agreement. Id. at 287.

Rutherford testified that after William's death, she received the proceeds of several insurance policies owned by William, real property that they jointly owned, a CD at the Bank, William's 401K and another IRA, and numerous savings bonds. William, even 'if alive," could not have "have refuted" her testimony about her having received these items. Bedree, 747 N.E.2d at 1195.

Further, before Rutherford took the stand, James had already testified to Rutherford's receipt of the jointly owned real property, the proceeds of several insurance policies, another IRA, and William's 401K. In addition, as Rutherford notes, the Estate elicited testimony from its own expert witness, Tucker, concerning what Rutherford had received upon William's death. We conclude that the trial court did not abuse its

discretion when it allowed Rutherford to testify and limited her testimony solely to property she received after William's death.

2. Instructional Error

The giving of jury instructions lies within the discretion of the trial court. Michigan Mut. Ins. Co. v. Sports, Inc., 698 N.E.2d 834, 839 (Ind. App. 1998), trans. denied. We review its decision only for an abuse of discretion. Id. Reversal based upon instructional error is warranted only when the trial court's instructions, taken as a whole, misstate the law or mislead the jury. Id. Further, in determining whether it is error to refuse a tendered instruction, we consider (1) whether the tendered instruction correctly states the law, (2) whether there is evidence in the record to support giving the instruction, and (3) whether the substance of the instruction is covered by other instructions. Miller Brewing v. Best Beers, 608 N.E.2d 975, 979 (Ind. 1999).

The Estate argues that the trial court committed reversible error when it refused to give to the jury its tendered instruction defining "what 'genuine' means." Estate's Br. at 23. The tendered instruction[6] was necessary, the Estate asserts, because the "the issue instruction . . . referred to a 'non-genuine' signature." Id.

First, we note that the Appendix submitted by the Estate does not contain the full set of instructions given the jury. Nor does the transcript of the trial include the trial court's instructions to the jury. Thus, the Estate's submission precludes our reviewing

[6] The instruction tendered by the Estate stated as follows: "Genuine means as applied to notes, bonds, and other written instruments, this term means that they are truly what they purport to be, and that they are not false, forged, fictitious, simulated, spurious, or counterfeit." (App. 7).

"other instructions" given as prescribed by our standard of review. Miller, 608 N.E.2d at 979.

Next, no "issue instruction" is contained in the Estate's Appendix. The Appendix presents only two instructions. One explains that it was Rutherford's burden to prove by a preponderance of the evidence that the form designating her as beneficiary of William's IRA "is or was validly executed" by William. (App. 7). The other instruction presented explained to the jury that "execution" of a written instrument "includes" five specific requirements. (App. 6). The word "non-genuine" does not appear in either of the instructions presented. An appellant bears the burden of presenting this court with a record complete enough to sustain its argument. Purdy v. State, 708 N.E.2d 20, 23 (Ind. Ct. App. 1999). Therefore, the Estate's argument that because another instruction used the word "non-genuine," the trial court was required to instruct the jury as to the meaning or by defining the word "genuine" must fail.

Moreover, the trial court's obligation to "define" terms in its instructions generally applies to "technical and legal phrases in connection with material issues of the lawsuit." Miller, 608 N.E.2d at 980. We do not perceive that the concept of "genuineness" is of such a technical nature that the jury would require it to be defined to them in an instruction. Accordingly, we find no error in the trial court's refusal of the Estate's tendered instruction.

3. Sufficiency of the Evidence

The Estate argues that the trial court erred when it declined to set aside the jury's verdict upon its motion to correct error asserting that it was entitled to judgment on the

evidence.[7] Specifically, it contends that because "Rutherford failed to present any specific evidence" that the signature on the statement directing a change of beneficiary was Drake's signature, or "was made with [his] express, implied, or apparent authority," the "verdict simply cannot stand." Estate's Br. at 11, 12. We disagree.

The standard of appellate review of trial court rulings on a motion to correct error is abuse of discretion. Paragon Family Restaurant v. Bartolini, 799 N.E.2d 1048, 1055 (Ind. 2003). When the trial court declines to intervene and refuses to set aside the jury verdict, it is not the province of an appellate court to do so unless the verdict is wholly unwarranted under the law and the evidence. Id. at 1056. When we review the trial court's ruling on a motion for judgment on the evidence *or* a motion to correct error in that regard, we "consider only the evidence and reasonable inferences most favorable to the non-moving party." PSI Energy, Inc. v. Roberts, 829 N.E.2d 943, 950 (Ind. 2005). We do not weigh the evidence or judge witness credibility. Id.

The trial court instructed the jury that it was Rutherford's burden to prove, by a preponderance of the evidence, that the change of beneficiary naming her as the beneficiary of William's IRA "is or was validly executed by" William. (App. 5). It further instructed the jury as follows:

"Execution" of a written instrument includes the following requirements:

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[7] As Rutherford points out, the Estate's Appendix does not provide its motion. Rutherford asserts that because the record provided by the Estate failed to "set out the reasons" argued to the trial court in support of its motion for judgment on the evidence, we should find that the Estate has "not sufficiently preserved this argument for appeal." Rutherford's Br. at 7. Inasmuch as the CCS does reflect the filing of the motion, and Rutherford neither (1) expressly asserts that the Estate did not seek this relief in its motion, nor (2) has tendered a Supplemental Appendix showing that the Estate's motion was insufficient in this regard, we will address the Estate's argument.

> (1) that a signature was made with express, implied or apparent authority and was not forged;
> (2) that the instrument was properly delivered, including any requisite intent that it be effective;
> (3) that the written terms of the instrument have not been materially altered without the express, implied or apparent authority of the person bound thereon;
> (4) that the person seeking its enforcement is in possession of the instrument when required; and
> (5) that the names or identity of the persons named in the instrument are correct.

(App. 6). This language is found in Indiana Trial Rule 9.2(H), and the Estate does not challenge it as being an incorrect statement of the law or inapplicable here.

In summary, the evidence reveals that in 1983, William established the IRA account and named his mother as beneficiary. A Bank witness testified that it was common to change a beneficiary upon the death of the designated beneficiary. Exhibit 2, stating the change of William's beneficiary to Rutherford, at his "same address," is dated two weeks after the death of William's Mother. At this time, in 1993, Rutherford had been living with William for many years. Based upon the Bank procedures, the receipt of Exhibit 2 would have resulted in the Bank contacting William to obtain the additional information to effect the change of beneficiary – the new beneficiary's correct name and Social Security Number. A note written by a Bank employee stating "Re: Beneficiary for William Drake IRA" and containing Rutherford's correct name and Social Security Number was found with Exhibit 2 in William's IRA file in the locked vault of the Bank's trust department. It was undisputed that the Bank's procedure would have been to contact the account owner and obtain the necessary information to effect a change of beneficiary supports the reasonable inference that when William was so contacted and the

necessary information provided, his response to the Bank constituted an express or implied authorization of the signature on Exhibit 2 that rendered it validly executed. Further, evidence that upon William's death, he had arranged for significant other assets to pass to Rutherford supports the reasonable inference that he had also authorized the execution of a document bearing a date two weeks after his mother's death and indicating that Rutherford was the beneficiary of the IRA.

Because the jury's verdict is not wholly unwarranted under the law and the evidence, we do not find that the trial court abused its discretion when it denied the Estate's motion to correct error seeking judgment on the evidence.

Affirmed.

RILEY, J. and VAIDIK, J., concur.